

To: Hough, Palmer[Hough.Palmer@epa.gov]; Moulta-Ali, Abu[Moulta-Ali.Abu@epa.gov]
From: Pendergast, Jim
Sent: Wed 6/25/2014 2:02:12 PM
Subject: RE: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm
[AX-14-001-1153 Wiggins.pdf](#)

I think the same. I've attached the incoming letter.

From: Hough, Palmer
Sent: Wednesday, June 25, 2014 9:47 AM
To: Pendergast, Jim; Moulta-Ali, Abu
Subject: FW: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

Jim/Abu:

Is this reporting referring to the same case described in the CMS letter we recently received or is this a different case?

-Palmer

From: Hough, Palmer
Sent: Wednesday, June 25, 2014 9:30 AM
To: Loop, Travis; Holsman, Marianne; Wester, Barbara; Cassell, Peter; Cannon, Phillippa; Rowan, Anne; Swenson, Peter; Melgin, Wendy; Pendergast, Jim
Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff
Subject: RE: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

Folks:

Most of Ben's questions are of a very general nature and are addressed in the 404(c) factsheet on our website. Among other things this factsheet notes that:

<http://water.epa.gov/lawsregs/guidance/cwa/dredgdis/upload/404c.pdf>

-it's the RA's decision to start a 404(c) review

-it lists the factors that can be a basis for a 404(c) review (which come from the statute – “i.e., unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas”

-in the event an RA decides to start a 404(c) review, the factsheet describes the timeframes spelled out in our Regs for this 4-step review process and notes that the process can be terminated at any step as the analysis evolves.

I would emphasize to him that EPA uses its 404(c) authority judiciously and sparingly. It has completed only 13 404(c) actions in the 42-year history of the CWA.

I would also emphasize that each case is very unique, so it is unwise to suggest that any one case represents a “template” for future cases.

-Palmer

From: Loop, Travis

Sent: Tuesday, June 24, 2014 7:29 PM

To: Holsman, Marianne; Wester, Barbara; Cassell, Peter; Cannon, Phillippa; Rowan, Anne; Swenson, Peter; Melgin, Wendy; Pendergast, Jim; Hough, Palmer

Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff

Subject: Re: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

Adding Palmer.

Travis Loop

Director of Communications

Office of Water

U.S. Environmental Protection Agency

202-870-6922

From: Holsman, Marianne
Sent: Tuesday, June 24, 2014 3:55:10 PM
To: Loop, Travis; Wester, Barbara; Cassell, Peter; Cannon, Phillippa; Rowan, Anne; Swenson, Peter; Melgin, Wendy; Pendergast, Jim
Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff
Subject: RE: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

Hi Folks:

I think Palmer Hough would be a good person to start with in OW, he's our point person on the process. I think this needs to be an HQ lead response since it deals with more than one region. What we usually do is point people to the process information on the website, that spells out the process quite well. We also have a fairly robust Bristol Bay website.

Hope that helps.

Marianne

206.553.1237 desk

206.450.5895 cell

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From: Loop, Travis
Sent: Tuesday, June 24, 2014 12:03 PM
To: Wester, Barbara; Cassell, Peter; Cannon, Phillippa; Rowan, Anne; Swenson, Peter; Melgin, Wendy; Holsman, Marianne; Pendergast, Jim
Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff
Subject: Re: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

Adding Marianne from R10 also. They have pretty good answers. Perhaps our wetland office has a good answer on overall process too.

Travis Loop
Director of Communications
Office of Water
U.S. Environmental Protection Agency
202-870-6922

From: Wester, Barbara
Sent: Tuesday, June 24, 2014 2:57:39 PM
To: Cassell, Peter; Cannon, Phillippa; Rowan, Anne; Swenson, Peter; Melgin, Wendy
Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff; Loop, Travis
Subject: RE: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

one way to handle the broader question about how the RA would make such a determination would be to generally reference what was done leading up to the decision regarding bristol bay – hq may have press points on that already. let me know what other help i might be able to provide.

From: Cassell, Peter
Sent: Tuesday, June 24, 2014 1:54 PM
To: Cannon, Phillippa; Rowan, Anne; Swenson, Peter; Melgin, Wendy; Wester, Barbara
Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff; Loop, Travis
Subject: Re: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

I copied travis here who may want to handle the response.

From: Cannon, Phillippa
Sent: Tuesday, June 24, 2014 1:51:54 PM
To: Rowan, Anne; Swenson, Peter; Cassell, Peter; Melgin, Wendy; Wester, Barbara
Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff
Subject: RE: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) -- deadline today at 3pm

Pete – I am not sure who is handling water issues in OEAE these days, but George Hull is the director of the Office of Media Relations. If you forward this to him, he can make sure the right people are involved.

From: Rowan, Anne

Sent: Tuesday, June 24, 2014 1:21 PM

To: Swenson, Peter; Cassell, Peter; Melgin, Wendy; Wester, Barbara

Cc: Singer, Joshua; Deamer, Eileen; Kelley, Jeff; Cannon, Phillippa

Subject: Questions from Rhinelander Newswatch RE: Ojibwe request to EPA under 404(c) --deadline today at 3pm

Thanks, Peter. Certainly any questions regarding Bristol Bay ought to go to Hqs OEAE (press shop) to coordinate the response with Region 10. And probably OEAE needs to advise on the entire response –so Peter, please work with them this afternoon. I think the letter is the only thing the Region can provide at the moment to this reporter–assuming it’s a public document? I’m copying Barbara Wester to answer that question. Any response crafted by the Region will need the RA’s approval. Thanks.

Anne Rowan, Chief

Public Affairs Section

Office of External Communications

U.S. EPA Region 5, Chicago

rowan.anne@epa.gov

312-353-9391

From: Swenson, Peter

Sent: Tuesday, June 24, 2014 1:07 PM

To: Cassell, Peter; Melgin, Wendy

Cc: Rowan, Anne; Singer, Joshua; Deamer, Eileen

Subject: RE: Ojibwe request to EPA under 404(c)

Pete

I don't have answers to the questions that he is asking. I left a message for Jim Pendergast at OWOW, in particular about a contact for Bristol Bay. John Goodin is also a good contact, but is new to his (acting) position. Jim was acting in the same position until a week ago.

His other questions are quite broad and probably don't have easy answers. (Except possibly the one on timeframes – there may not be any.)

I talked with Wendy and we really think HQ ought to be involved. I am on leave starting now, but Wendy could get on the phone with HQ to talk about this.

Peter Swenson (WW-16J)

Chief, Watersheds and Wetlands Branch

U.S. Environmental Protection Agency, Region 5

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From: Cassell, Peter
Sent: Tuesday, June 24, 2014 10:39 AM
To: Swenson, Peter; Maraldo, Dean
Cc: Rowan, Anne; Singer, Joshua; Deamer, Eileen
Subject: Fw: Ojibwe request to EPA under 404(c)

Can you help draft a response to these questions?

From: Ben Meyer <bmeyer@wjfw.com>

Sent: Tuesday, June 24, 2014 9:15:57 AM
To: Cassell, Peter
Subject: Ojibwe request to EPA under 404(c)

Hi Peter,

Thanks for your help on the phone a moment ago. Attached is the letter sent by the Ojibwe tribes to the EPA asking the agency to use its authority under Section 404(C) of the Clean Water Act to stop mine permitting activities in northern Wisconsin. I did find a fact sheet about 404(C) "veto" authority on the EPA website, but I want to make sure I understand it fully. Specifically, I see that the formal process starts when the EPA Regional Administrator makes the determination to issue a public notice of a Proposed Determination to withdraw, prohibit, deny, or restrict the specification of a defined area for discharge of dredged or fill material. I'm interested in learning *how* the Regional Administrator makes that determination, *what the timeline* for that is, and *what factors* go into making that determination. I'd also like someone to walk me through the "Veto" process if that determination is made.

Moreover, not in their letter, but in anecdotal conversations, Ojibwe leaders have referenced the Pebble Mine in Alaska as a template for the EPA using 404(C) to stop a project. If I could talk to someone with knowledge of that issue, I'd appreciate it.

Ideally, I'd love to do a video Skype or phone interview. My deadline is 3pm today. Please be in touch via email or the phone number below. Thank you for your help!

Best,

Ben

Ben Meyer
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